

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CLAYTON CORPORATION,

Plaintiff,

v.

MOMENTIVE PERFORMANCE,
MATERIALS, INC., et al.,

Defendants.

Case No. 4:12CV01349 AGF

MEMORANDUM AND ORDER

This patent infringement case is before the Court on the motion (Doc. No. 83) of Defendants Lindal North America, Inc., (“Lindal”) and Altachem NV (“Altachem”) (collectively, “Defendants”) to amend the protective order. The Court has reviewed Defendants’ motion, which asks the Court to reconsider its May 14, 2013 Memorandum and Order (Doc. No. 49), in which the Court denied without prejudice Defendants’ request for the inclusion of a two-year patent prosecution bar because Defendants did not meet their burden of showing good cause for entry of such a bar. Specifically, Defendants offered no specific evidence that Plaintiff’s trial counsel was engaged in “competitive decision making related to the subject matter of the litigation so as to give rise to a risk of inadvertent use of confidential information learned in litigation.” *In re Deutsche Bank Trust Co. Am.*, 605 F.3d 1373, 1381 (Fed. Cir. 2010).

In their current Motion for Amendment to the Protective Order, Defendants put forth new evidence that appears to raise genuine concerns with respect to the role of

Plaintiff's trial counsel in matters that are likely to implicate competitive decision making. In light of this new evidence, Defendants seek to amend the protective order to include a revised, three-year patent prosecution bar. In response, Plaintiff argues that the current protective order provides adequate protection for the parties' confidential information and that the imposition of Defendants' proposed patent prosecution bar will interfere with Plaintiff's ability to engage counsel of its choice. Although the Court appreciates Plaintiff's concerns in preserving its access to the advice of counsel of its choice, Plaintiff's response does not address Defendants' new evidence with sufficient detail or supporting evidence to give the Court comfort that Defendants' confidentiality concerns are unfounded or adequately protected.

Accordingly,

IT IS HEREBY ORDERED that, within fourteen (14) days of the date of this Order, Plaintiff and Defendants Altachem and Lindall shall confer in good faith, in accordance with Local Rule 37-3.04, to attempt to agree on an amendment to the protective order that addresses all parties' concerns.

IT IS FURTHER ORDERED that by **August 15, 2014**, the parties shall file either (1) a Joint Motion for Amendment to the Protective Order, or (2) a Notice advising the Court that the parties were unable to reach an agreement regarding an amendment to

the protective order, in which case the Court will address Defendants' motion for amendment to the protective order (Doc. No. 83).



AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 24th day of July, 2014